

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

---

**H-D U.S.A., LLC and HARLEY-  
DAVIDSON MOTOR COMPANY  
GROUP, LLC,**

Case No. 2:17-cv-0071

Plaintiffs,

vs.

**SUNFROG, LLC d/b/a SUNFROG  
SHIRTS and JOHN DOES,**

Defendants.

---




**DECLARATION OF ABEL LOW**

---

I, Abel Low, declare as follows:

1. I am the Brand Protection Manager for the Asia-Pacific region for Plaintiff Harley-Davidson Motor Company Group, LLC, which is licensed to use trademarks owned by Plaintiff H-D U.S.A., LLC (collectively, “H-D”). I have been in this position since July 2012. In this position, I have worked on intellectual property matters, including conducting investigations regarding unauthorized use of H-D’s trademarks online and offline, and handling and submitting takedown complaints to online retailers and sending cease-and-desist letters, among other things.
2. The facts set forth in this Declaration are based on my personal knowledge and/or documents maintained by H-D in the course of its business.
3. Part of my role as a Brand Protection Manager is to locate infringements of H-D’s trademarks and counterfeit goods bearing H-D’s trademarks, and to investigate infringements

that are brought to my attention by others. H-D's trademarks include the HARLEY-DAVIDSON, HARLEY, H-D, HD, FAT BOY, and SPORTSTER word marks; and its Bar & Shield Logo, Willie G. Skull Logo, and Number 1 Logo trademarks shown below (collectively, the "H-D Marks"). I frequently monitor a number of online websites as part of my enforcement efforts regarding the H-D Marks.

The "Bar & Shield Logo"	The "Willie G. Skull Logo"	The "Number 1 Logo"
		

4. SunFrog, LLC d/b/a SunFrog Shirts ("SunFrog") operates a website accessible via the domain names SUNFROG.COM and SUNFROGSHIRTS.COM ("SunFrog's Website") on which SunFrog markets, promotes, advertises, and sells apparel, mugs, and other products, including a large number of such products bearing one or more of the H-D Marks (collectively, "Infringing Products").

5. From February 2017 through April 2017, I submitted takedown complaints to SunFrog that (a) notified SunFrog of H-D's rights in several H-D Marks, and (b) reported and objected to numerous Infringing Products offered on SunFrog's Website. I submitted the takedown complaints online using SunFrog's "Report a Violation" form on SunFrog's Website located at the URL <https://www.sunfrog.com/Legal/report.cfm>. A true and correct copy of a printout of SunFrog's "Report a Violation" blank form is attached as Exhibit 1. During this time period, I submitted at least 20 complaints covering more than 540 Infringing Products.

6. In response to most of the takedown complaints referenced in Paragraph 5 above, I received two e-mails from SunFrog. The first e-mail had the subject line “Infringement Claim Confirmation,” and confirmed SunFrog’s receipt of the submitted infringement claim. The second e-mail from SunFrog had the subject line “Infringement Claim Acted Upon” and stated: “Please note that the claim you have submitted to SunFrog through the infringement notification form has been acted upon. The design has been deactivated and should no longer be found on the SunFrog platform.” The “Infringement Claim Acted Upon” e-mail also listed SunFrog’s URL for the Infringing Product on SunFrog’s Website. True and correct copies of representative examples of “Infringement Claim Confirmation” and “Infringement Claim Acted Upon” e-mails that I received from SunFrog are attached as Exhibit 2.

7. Attached as Exhibit 3 is a true and correct copy of a chart listing representative examples of SunFrog’s URLs for Infringing Products that were the subject of the above takedown complaints that I submitted to SunFrog, the date on which I submitted the complaints, the date on which I received SunFrog’s “Infringement Claim Acted Upon” e-mails for such Infringing Products, the sellers’ names, and images for some of the Infringing Products. Based on my dealings with SunFrog, it typically took SunFrog 2-3 days to send me a “Infringement Claim Acted Upon” e-mail after I submitted the takedown complaint, and in some cases it took up to 7 days.

8. The numerous images of Infringing Products on Exhibit 3 represent seventeen (17) different infringing designs bearing H-D’s Marks. Attached as Exhibit 4 are true and correct copies of screen shots from SunFrog’s Website consisting of one example of each of the seventeen (17) infringing designs on Exhibit 3 (namely, Infringing Products Nos. 395, 403, 412, 421, 430, 439, 448, 457, 468, 477, 486, 495, 504, 513, 522, 531, and 540). The screen shots in

Exhibit 4, which are dated May 16, 2017, are the pages of SunFrog's Website associated with SunFrog's image URLs (e.g., <https://images.sunfrogshirts.com/2017/03/29/0EE026F3-155D-158F-B447205EC3C2ABE5.jpg>) for the Infringing Products in the takedown complaints that I submitted to SunFrog on various dates in March 2017 and April 2017.

9. The SunFrog sellers "BW999" and "Bomman" have been the sellers on SunFrog's Website of hundreds of Infringing Products listed in the takedown complaints that I submitted to SunFrog. These sellers have continued to this day to create and sell numerous Infringing Products on SunFrog's Website, including the representative examples shown below:



True and correct copies of screen shots from SunFrog's Website of the Infringing Products shown above are attached as Exhibit 5. See Exhibit 3 for numerous Infringing Products offered by these sellers that were the subject of prior takedown complaints.

10. On March 30, 2017, I submitted takedown complaints to SunFrog for numerous Infringing Products, including nine Infringing Products bearing the design shown below, namely, the apparel products Guys Tee, Hoodie, Sweat Shirt, Ladies Tee, Youth Tee, Guys V-Neck, Ladies V-Neck, Unisex Tank Top, and Unisex Longsleeve. On April 2, 2017, I received SunFrog's "Infringement Claim Acted Upon" e-mails for these Infringing Products.



True and correct copies of screen shots from SunFrog's Website of the Infringing Products bearing the design shown above are attached as Exhibit 6. The screen shots in Exhibit 6, which are dated May 15, 2017, are the pages of SunFrog's Website associated with SunFrog's image URLs (e.g., <https://images.sunfrogshirts.com/2017/03/22/81088-1490156327734-Gildan-Men-Black-w91-front.jpg>) for the Infringing Products in the March 30, 2017 takedown complaints that I submitted to SunFrog. See Exhibit 3, Infringing Products Nos. 412 - 420.

11. On March 31, 2017, I submitted takedown complaints to SunFrog for nine Infringing Products bearing the design shown below, namely, the apparel products Guys Tee, Hoodie, Sweat Shirt, Ladies Tee, Youth Tee, Guys V-Neck, Ladies V-Neck, Unisex Tank Top, and Unisex Longsleeve. On April 2, 2017, I received SunFrog's "Infringement Claim Acted Upon" e-mails for these Infringing Products.



True and correct copies of screen shots from SunFrog's Website of the Infringing Products bearing the design shown above are attached as Exhibit 7. The screen shots in Exhibit 7, which are dated May 15, 2017, are the pages of SunFrog's Website associated with SunFrog's image URLs (e.g., [https://images.sunfrogshirts.com/2017/03/22/81088-1490156327734-Gildan-Men-Black-\\_w91\\_-front.jpg](https://images.sunfrogshirts.com/2017/03/22/81088-1490156327734-Gildan-Men-Black-_w91_-front.jpg)) for the Infringing Products listed in the March 31, 2017 takedown complaints that I submitted to SunFrog. See Exhibit 3, Infringing Products Nos. 421 - 429.

12. On April 7, 2017, I submitted takedown complaints to SunFrog for nine Infringing Products bearing the design shown below, namely, the apparel products Guys Tee, Hoodie, Sweat Shirt, Ladies Tee, Youth Tee, Guys V-Neck, Ladies V-Neck, Unisex Tank Top, and Unisex Longsleeve. On April 10, 2017, I received SunFrog's "Infringement Claim Acted Upon" e-mail for these Infringing Products.



True and correct copies of screen shots from SunFrog's Website of the Infringing Products bearing the design shown above are attached as Exhibit 8. The screen shots in Exhibit 8, which are dated May 15, 2017, are the pages of SunFrog's Website associated with the image URLs (e.g., [https://images.sunfrogshirts.com/2017/03/18/81088-1489811180923-Gildan-Men-White-w91\\_-front.jpg](https://images.sunfrogshirts.com/2017/03/18/81088-1489811180923-Gildan-Men-White-w91_-front.jpg)) for the Infringing Products listed in the March 31, 2017 takedown complaints that I submitted to SunFrog. See Exhibit 3, Infringing Products Nos. 430 – 438.

13. H-D has obtained several Infringing Products through test purchases that I coordinated or as a result of Customs seizures. In each case, products were shipped from SunFrog listing its address of 1782 O'Rourke Blvd., Gaylord, MI 49735. True and correct copies of the mailing labels (with customer information redacted) from a test purchase and a Customs seizure are attached as Exhibit 9.

14. Below is an image of an Infringing Product in the form of a t-shirt obtained in a test purchase from SunFrog that I coordinated. This Infringing Product has a neck label with the SunFrog brand on the label as shown below.





15. Below is an image of an Infringing Product in the form of a mug obtained in a test purchase from SunFrog that I coordinated.



16. SunFrog's invoice for the two Infringing Products shown above in Paragraphs 13 - 14 lists the payment address as SunFrog's address, 1782 O'Rourke Blvd., Gaylord, MI 49735. A true and correct copy of this invoice (with customer information redacted) is attached as Exhibit 10.

17. SunFrog continues to this day to advertise, offer, and sell numerous Infringing Products bearing the H-D Marks on SunFrog's Website.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct pursuant to 28 U.S.C. § 1746.

Dated: May 19, 2017

By: 

Abel Low



### **Exhibit Index for Declaration of Abel Low**

- 1 - True and correct copy of a printout of SunFrog's "Report a Violation" blank form
- 2 - True and correct copies of representative examples of "Infringement Claim Confirmation" and "Infringement Claim Acted Upon" e-mails that I received from SunFrog
- 3 - True and correct copy of a chart listing representative examples of SunFrog's URLs for Infringing Products that were the subject of the above takedown complaints that I submitted to SunFrog, the date on which I submitted the complaints, the date on which I received SunFrog's "Infringement Claim Acted Upon" e-mails for such Infringing Products, the sellers' names, and images for some of the Infringing Products
- 4 - True and correct copies of screen shots from SunFrog's Website consisting of one example of each of the seventeen (17) infringing designs on Exhibit 3 (namely, Infringing Products Nos. 395, 403, 412, 421, 430, 439, 448, 457, 468, 477, 486, 495, 504, 513, 522, 531, and 540)
- 5 - True and correct copies of screen shots from SunFrog's Website of the Infringing Products shown in Paragraph 9
- 6 - True and correct copies of screen shots from SunFrog's Website of the Infringing Products bearing the design shown in Paragraph 10
- 7 - True and correct copies of screen shots from SunFrog's Website of the Infringing Products bearing the design shown in Paragraph 11
- 8 - True and correct copies of screen shots from SunFrog's Website of the Infringing Products bearing the design shown in Paragraph 12
- 9 - True and correct copies of the mailing labels (with customer information redacted) from a test purchase and a Customs seizure
- 10 - True and correct copy of SunFrog's invoice (with customer information redacted) for the two Infringing Products shown in Paragraphs 13 - 14